

Cause No. PD-0181-17

**IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS**

FILED
COURT OF CRIMINAL APPEALS
8/21/2017
DEANA WILLIAMSON, CLERK

JUAN ANTONIO GONZALEZ

APPELLANT

V.

THE STATE OF TEXAS

APPELLEE

**STATE'S SUPPLEMENTAL RESPONSE TO APPELLANT'S MOTION TO
SET BAIL FOLLOWING REVERSAL ON APPEAL**

COMES NOW, the State of Texas, appellee, in the above-styled cause, and files this, the State's supplemental response to appellant's motion to set bail following reversal on appeal, and would show the Court as follows:

I. Procedural history

On January 25, 2017, in an unpublished opinion, the Eighth Court of Appeals reversed Gonzalez's conviction for murder and remanded the case to the trial court. *See Gonzalez v. State*, No. 08-14-00293-CR, 2017 WL 360690 at *25 (Tex.App.–El Paso, Jan. 25, 2017, pet. granted) (not designated for publication). On May 17, 2017, this Court granted the State's petition for discretionary review, and on June 2, 2017, the State filed its PDR brief. Gonzalez filed his PDR reply

brief on July 19, 2017, and the case is currently set to be submitted on August 16, 2017.

On August 3, 2017, Gonzalez filed a motion for bail following reversal on appeal. The State filed its initial response to Gonzalez's bail motion on August 9, 2017, requesting that bail be set at an amount no less than \$2,000,000, which is no greater than Gonzalez's pretrial bail amount. The State now submits the following supplemental information in support of its request that bail be set in an amount no less than \$2,000,000.

II. Gonzalez's repeated inability to refrain from assaultive conduct when angered demonstrates that he will continue to express his anger in ways that threaten the safety of the community.

In its initial response to Gonzalez's bail motion, the State argued that Gonzalez's flippant attitude about physical violence, his disregard for its potential to inflict serious bodily injury or death, and the ease with which he can be provoked into extreme physical violence poses a threat to the community and warrants the setting of a high bond. *See* (State's initial response at 8-10). The evidence at trial demonstrated that as Gonzalez and his companions walked away from the deceased in this case, Jonathan Molina, who was still lying on the ground, Gonzalez was "really, really mad," complaining that he did not know why Molina yelled at him for no reason, that Molina had "really pissed [him] off," and

that Molina was not his father and was no one to be yelling at him like that.

(Reporter's Record, vol. 3 at 259-60, 262); (Reporter's Record, vol. 4 at 101).

The attached offense reports and witness statement reflect that on February 1, 2014, while awaiting trial in the El Paso County Jail for viciously and senselessly attacking Molina and causing his death, Gonzalez reportedly assaulted a fellow inmate, David Ayoub, for merely urinating in the jail-cell toilet:

Ayoub stated that while he was urinating in the toilet, Gonzalez confronted him because he said he considered it disrespectful for anyone to use the toilet in the cell while other inmates are in the cell. Ayoub stated that Gonzalez threatened him, stating that if he continued to be disrespectful he would get "Bopped." Ayoub stated that means he was threatening to assault him. Gonzalez then proceeded to [a]ssault Ayoub with a closed right fist to the left temple of [Ayoub] causing him pain....

See (Appendix L – offense reports). That Gonzalez, while awaiting trial for killing Molina by physically assaulting him, threatened and then physically assaulted a fellow inmate—striking him in the head—for something so trivial as relieving himself in the toilet provided in the jail cell for that purpose demonstrates that Gonzalez continues to exercise poor judgment when angered and that he will continue to express that anger in ways that threaten the safety of the community.

Again, the State requests that Gonzalez's bail be set at an amount no less than \$2,000,000, which is the same as his pretrial bond amount.

PRAYER

WHEREFORE, the State prays that this Court sets the appellant's bail at an amount no less than \$2,000,000.

Respectfully submitted,

JAIME ESPARZA
DISTRICT ATTORNEY
34th JUDICIAL DISTRICT

/s/ Lily Stroud

LILY STROUD
ASST. DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
201 EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO
EL PASO, TEXAS 79901
(915) 546-2059 ext. 3769
FAX (915) 533-5520
EMAIL lstroud@epcounty.com
SBN 24046929

ATTORNEYS FOR THE STATE

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on August 14, 2017, a copy of the foregoing supplemental response was sent by email, through an electronic-filing-service provider, to appellant's attorney: Ruben P. Morales, rbnpmrls@gmail.com.

/s/ Lily Stroud

LILY STROUD

I N C I D E N T D A T A	Agency Name El Paso County Sheriff's	INCIDENT / INVESTIGATION REPORT				OCA 2014-01092			
	ORI TX0710000			Date / Time Reported SA Feb 1, 2014 06:22					
#1 #2 #3	Crime Incident INMATE ASSAULT NON CRIMINAL	UCR: 999	Local Statute: JAIL FI 27	<input type="checkbox"/> Att <input checked="" type="checkbox"/> Com	Last Known Secure SA Feb 1, 2014 06:22				
	Crime Incident	UCR:	Local Statute:	<input type="checkbox"/> Att <input type="checkbox"/> Com	At Found SA Feb 1, 2014 06:22				
	Crime Incident	UCR:	Local Statute:	<input type="checkbox"/> Att <input type="checkbox"/> Com					
Location of Incident 12501 Montana Ave Wb Apt. So, El Paso, TX 79938		Premise Type Jail/Penitentiary			Offense Tract JANX				
M O	How Attacked or Committed								
	Weapon / Tools Forcible Entry <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A								
V I C T I M	# Victims 1	Type Individual	Injury None						
	Victim/Business Name (Last, First, Middle) V1 Ayoub, David			Victim of Crime # 1	Age / DOB [REDACTED]	Race W	Sex M		
				Relationship to Offenders					
	Home Address [REDACTED]				Home Phone [REDACTED]				
	Employer Name/Address [REDACTED]				Business Phone				
V E H	VYR	Make	Model	Style	Color	Lic/Lis	VIN		
O T H E R I N V O L V E D	CODES: V - Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim) I = Other Involved								
	Code	Name (Last, First, Middle)			Victim of Crime #	Age / DOB	Race Sex		
	Home Address					Home Phone			
	Employer Name/Address					Business Phone			
	Code	Name (Last, First, Middle)			Victim of Crime #	Age / DOB	Race Sex		
	Home Address					Home Phone			
Employer Name/Address					Business Phone				
P R O P E R T Y	Status Codes L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found U = Unknown (Check "OJ" column if recovered for other jurisdiction)								
	Victim #	UCR	Status - Date	Value	OJ	QTY	Property Description	Make/Model	Serial Number
Number of Vehicles Stolen 0		Number Vehicles Recovered 0							
ID	Officer/Employee (4931) ESPARZA, JOSE M			Officer/Employee Signature		Supervisor Signature (1967) SANTANA, MARIA D			
Complainant Signature				Case Status: Further Investigation February 1, 2014		Case Disposition:			

Incident / Investigation Report

El Paso County Sheriff's

OCA: 2014-01092

Status Codes L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found U = Unknown															
D R U G S	Status		Quantity		Type Measure			Suspected Drug Type							
O F F E N D E R	Offender(s) Suspected of Using <input type="checkbox"/> Drugs <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer				Offender 1 OF1 Age: 18 Race: W Sex: M			Offender 2 Age: Race: Sex:			Offender 3 Age: Race: Sex:			Primary Offender Resident Status <input type="checkbox"/> Resident <input type="checkbox"/> Non-Resident <input checked="" type="checkbox"/> Unknown	
					Offender 4 Age: Race: Sex:			Offender 5 Age: Race: Sex:			Offender 6 Age: Race: Sex:				
	Name (L, F M) <i>Gonzalez, Juan</i> Home Address Home Phone OF1 AKA														
	Occupation					Business Address					Business Phone				
S U S P E C T	DOB. / Age		Race	Sex	Hgt	Wgt	Build	Hair Color		Eye Color					
	3/6/1995 18		W	M											
								Hair Style		Hair Length		Glasses			
	Scars, Marks, Tatoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)														
	Hat			Shirt/Blouse			Coat/Suit			Socks					
	Jacket			Tie/Scarf			Pants/Dress/Skirt			Shoes					
	Was Suspect Armed?		Type of Weapon					Direction of Travel			Mode of Travel				
V E H	VYR	Make	Model	Style/Doors	Color	Lic/Lis	Vin								
Suspect Hate / Bias Motivated: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Type:															
W I T N E S S	Name (Last, First, Middle)						D.O.B.	Age	Race	Sex					
	Home Address						Home Phone		Employer			Phone			
N A R R T I V E	On 2/1/2014, at 0550hrs while assigned to pod 100, I was dispatched to cellblock 110 in reference to a possible assault in cell 106. Upon arrival I met with the VICTIM who stated that he had just been Assaulted by the OFFENDER in cell 106. I noticed the VICTIM had a red mark and bruising to his right temple. The VICTIM stated that he was assaulted due to him using the restroom in the cellroom. He said he did not give the OFFENDER consent to assault him nor to cause him pain. The OFFENDER does not wish to press charges at this time.														

Incident / Investigation Report

El Paso County Sheriff's

OCA: 2014-01092

Investigative Supplement

Officer (4931) ESPARZA, JOSE M

Date / Time Reported SA Feb 1, 2014

06:22

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

On 2/1/2014 at 0550hrs while assigned to pod 100 I was dispatched to cellblock 110 in reference to a possible assault in cell 106. Upon arrival I met with Inmate Ayoub, David [REDACTED] SO# 9268285/VICTIM who stated that he had just been assaulted by Gonzalez, Juan DOB 03-06-95 SO# 9533686/ OFFENDER in cell 106 after eating breakfast at approximately 0547hrs. I noticed the Ayoub had a red mark and bruising to his left temple. Ayoub stated that while he was urinating in the toilet, Gonzalez confronted him because he said he considered it disrespectful for anyone to use the toilet in the cell while other inmates are in the cell. Ayoub stated that Gonzalez threatened him, stating that if he continued to be disrespectful he would get, "Bopped" . Ayoub said that means he was threatening to assault him. Gonzalez then proceeded to Assault Ayoub with a closed right fist to the left temple of the VICTIM causing him pain. Ayoub said he then grabbed Gonzalez in order to protect himself and they fell to the ground. They were then separated by other inmates in the cellblock. I noticed Gonzalez had a red mark to his face from the scuffle. Both inmates were seen by the clinic staff for their injuries. Ayoub has been transferred for his safety. Ayoub stated that he did not give Gonzalez consent to assault him nor cause him pain. Ayoub does not wish to press charges at this time for being ASSUALTED.

Incident / Investigation Report

El Paso County Sheriff's

OCA: 2014-01092

Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer (4931) ESPARZA, JOSE M

Supplement Type:

Date / Time 2/2/2014 02:54

On 02-01-14 at 0620hrs I escorted inmate Ayoub, David [REDACTED] S.O.#9268285 to the clinic after he was involved in an assault. He was seen for a red mark over his left temple by RN Nunez, Jennifer #5245. Inmate Ayoub was cleared to return to his cell. I then escorted him to releasing cell #10 pending transfer.

At 0630hrs I escorted inmate Gonzalez, Juan D.O.B. 03-06-1995 S.O.#9533686 to the clinic after being involved in an assault. He was seen and treated for a scrape on the left side of his head by RN Gardea, Carla #5726. Inmate Gonzalez was cleared to return to his cell. I then returned him to cell 106.

El Paso County Sheriff's Office

MULTI-PURPOSE REPORT

CONTINUATION
SUPPLEMENTARY REPORT

☐

OFFENSE NON-PROSECUTION-ASSAULT

☐

CASE NO. 2014-01092

INCIDENT NO. _____

SWORN SUPPLEMENT
WITNESS AFFIDAVIT

☒

COMPLAINANT Ayoub, David

ADDRESS _____

This statement was given voluntarily to: Officer Jose Esparza

Of the El Paso County Sheriff's Office by: Inmate Ayoub, David

Address 12501 E Montana

DOB _____

Phone # _____

Time 0630hrs

Date 2/1/2014

Page 1

Of 1

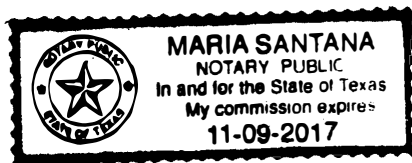
Pages

DAI, Officer Jose Esparza #4931 have worked with the Sheriff's Office as a Corrections Officer in the Jail Annex for 6 years and 1 month voluntarily received the following statement. DAI.

DAI. I, Ayoub, David [REDACTED] SO# 9268285, wish to voluntarily give the following statement to Officer Jose Esparza. On 2/1/2014 at approximately 0547hrs I was assaulted in cell 106 by inmate Gonzalez, Juan DOB 03-06-95 SO# 9533686. Inmate Gonzalez had struck me with a right closed fist to my left temple. I did not give him consent to strike me and cause me pain. I believe I was assaulted because I urinated in the toilet and Gonzalez was offended. I do not wish to file charges for being assaulted at this time. I find the following statements to be true and correct to the best of my ability DAI.

x David Ayoub

Ayoub, David S.O. #9268285



This Offense is Declared:
Exceptionally Cleared
Inactive (Not Cleared)
Unfounded
Cleared By Arrest

☐
☐
☐
☐
☐

SHERIFF'S 132-106 (REVISED)

Subscribed and sworn to before me, the undersigned authority, on
this the 2nd Day of Feb, 2014

[Signature]